

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MANUEL PUENTES-GARCIA,

Defendant.

Case No. 08-cr-30181-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on defendant Manuel Puentes-Garcia's motion for downward departure under the fast-track guidelines (Doc. 27). In an order dated August 27, 2012, the court indicated to Puentes-Garcia that it was inclined to recharacterize his motion as pursuant to 28 U.S.C. § 2255 because the relief he seeks is only available through such a motion. The Court did not so construe the motion at the time because it was not clear that Puentes-Garcia intended to invoke § 2255 and its restriction on filing second or successive § 2255 motions. The Court warned Puentes-Garcia of the consequences of filing a § 2255 motion and warned him that if he did not file a motion to withdraw his pending motion on or before September 10, 2012, the Court would construe it as a § 2255 motion and Puentes-Garcia would then be subject to the second or successive filing requirements contained in § 2255.

Puentes-Garcia has failed to file a motion withdrawing his pending motion. Since Puentes-Garcia has not moved to withdraw his pending motion (Doc. 27), the Court hereby recharacterizes it as a § 2255 motion as it warned Puentes-Garcia it would do. The Court further **DIRECTS** the Clerk of Court to file it as such and finds that the motion (Doc. 27) is **MOOT** to the extent that it remains pending in this case.

IT IS SO ORDERED.

DATED: November 16, 2012

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE